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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 EASTERN DIVISION

11 ANTONIO EDIOR PIERRE,

12 Petitioner,

13 v.

14  
15 MERRICK GARLAND, et al.,

16 Respondents.  
17

Case No. 5:23-cv-02606-ODW-JDE

ORDER TO SHOW CAUSE  
WHY THE PETITION SHOULD  
NOT BE DISMISSED FOR LACK  
OF JURISDICTION

18 I.

19 INTRODUCTION

20 On December 21, 2023, the Court received from Antonio Edior Pierre  
21 (“Petitioner”), proceeding pro se, a Petition for Writ of Habeas Corpus by a  
22 Person in Federal Custody pursuant to 28 U.S.C. § 2241. Dkt. 1 (“Petition” or  
23 “Pet.”). Petitioner, who is currently detained by U.S. Immigration and  
24 Customs Enforcement (“ICE”) at the Desert View Annex in Adelanto,  
25 California, purports to challenge his final order of removal.

26 Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the  
27 United States District Courts (“Habeas Rules”), a district court “must  
28 promptly examine” the petition and, “[i]f it plainly appears from the petition

1 and any attached exhibits that the petitioner is not entitled to relief,” the “judge  
2 must dismiss the petition.” See also Mayle v. Felix, 545 U.S. 644, 656 (2005).  
3 A habeas petition brought under 28 U.S.C. § 2241 is subject to the same  
4 screening requirements that apply to habeas petitions brought under 28 U.S.C.  
5 § 2254. See Habeas Rule 1(b) (providing that district courts may apply the  
6 Habeas Rules to habeas petitions that are not brought under 28 U.S.C. § 2254);  
7 Lane v. Feather, 584 F. App’x 843, 843 (9th Cir. 2014) (affirming district  
8 court’s application of Habeas Rule 4 in dismissing a Section 2241 petition).

9 The Court has reviewed the Petition under Habeas Rule 4 and finds the  
10 Petition appears subject to dismissal for lack of jurisdiction.

## 11 II.

### 12 SUMMARY OF THE PETITION

13 The Department of Homeland Security (“DHS”) initiated removal  
14 proceedings on July 19, 2023, serving Petitioner with a Notice of Intent to  
15 Issue a Final Administrative Removal Order (“Notice of Intent”). A Final  
16 Administrative Removal Order was served on Petitioner the same day, without  
17 “obtaining a concession of removability.” Pet. at 3, 7 (CM/ECF pagination).  
18 Petitioner challenges the final order of removal, arguing that he is a citizen or  
19 national of the United States and DHS’s issuance of a Notice of Intent and the  
20 removal order the same day violated 8 U.S.C. § 1228(b)(4) and 8 C.F.R.  
21 § 238.1, which protects Petitioner’s due process rights. Id. at 3. Petitioner  
22 further contends: (1) DHS failed to prove by clear, convincing, and  
23 unequivocal evidence that he was removable under 8 U.S.C. § 1228(b) as a  
24 noncitizen convicted of an aggravated felony; (2) DHS erroneously concluded  
25 he “failed to establish a nexus to a protected ground sufficient to entitle him to  
26 a full hearing on his birth claim[] and withholding of removal claim”; (3) DHS  
27 erred in relying on Petitioner’s criminal case as it is “still pending his actual  
28 innocence motion”; and (4) he did not concede removability or waive his right

1 to rebut DHS's charges and "still had nearly the full ten days." Id. at 3-4.  
 2 Petitioner claims he has tried to file multiple motions in the Immigration  
 3 Court, but they have all been returned because his case number is incorrect. Id.  
 4 at 3. He requests that he be immediately released from custody. Id. at 4.

### 5 **III.**

### 6 **DISCUSSION**

7 Petitioners seeking habeas relief must show they are in custody in  
 8 violation of the Constitution, laws, or treaties of the United States. 28 U.S.C.  
 9 § 2241(c)(3). Section 2241 confers jurisdiction upon federal courts to consider  
 10 challenges to the detention of aliens in removal proceedings. See Demore v.  
 11 Kim, 538 U.S. 510, 517-18 (2003). However, pursuant to the REAL ID Act of  
 12 2005, which amended the Immigration and Nationality Act ("INA"), district  
 13 courts lack habeas jurisdiction to review final orders of removal; instead, "the  
 14 sole and exclusive means for judicial review of an order of removal" lies with  
 15 the appropriate court of appeals in a petition for review. 8 U.S.C. § 1252(a)(5);  
 16 Martinez v. Napolitano, 704 F.3d 620, 621-22 (9th Cir. 2012) ("The exclusive  
 17 means to challenge an order of removal is the petition for review process.");  
 18 see also 8 U.S.C. § 1252(g) ("Except as provided in this section and  
 19 notwithstanding any other provision of law . . . , including section 2241 of Title  
 20 28, or any other habeas corpus provision . . . no court shall have jurisdiction to  
 21 hear any cause or claim by or on behalf of any alien arising from the decision  
 22 or action by the Attorney General to commence proceedings, adjudicate cases,  
 23 or execute removal orders against any alien under this chapter."). The REAL  
 24 ID Act "makes the circuit courts the 'sole' judicial body able to review  
 25 challenges to final orders of deportation, exclusion, or removal." Alvarez-  
 26 Barajas v. Gonzales, 418 F.3d 1050, 1052 (9th Cir. 2005) (explaining that the  
 27 REAL ID Act "eliminated habeas jurisdiction, including jurisdiction under 28  
 28 U.S.C. § 2241, over final orders of deportation, exclusion, or removal").

1        Additionally, the INA includes a “zipper clause” that consolidates all  
2 “questions of law and fact . . . arising from any action taken or proceeding  
3 brought to remove an alien” into a petition for review. Martinez, 704 F.3d at  
4 622 (quoting 8 U.S.C. § 1252(b)(9)). “This statutory scheme was designed to  
5 ‘limit all aliens to one bite of the apple with regard to challenging an order of  
6 removal,’” id. (citation omitted), and makes clear that “review of a final  
7 removal order is the only mechanism for reviewing any issue raised in a  
8 removal proceeding.” Singh v. Gonzales, 499 F.3d 969, 976 (9th Cir. 2007)  
9 (citation omitted); see also J.E.F.M. v. Lynch, 837 F.3d 1026, 1031 (9th Cir.  
10 2016) (explaining that Section 1252(a)(5) and (b)(9) “channel judicial review  
11 over final orders of removal to the courts of appeal”).

12        While Section 1252 does not bar habeas review over claims “independent  
13 of or collateral to” the removal process, see J.E.F.M., 837 F.3d at 1032;  
14 Martinez, 704 F.3d at 622, challenges to the procedure and substance of an  
15 agency finding that are “inextricably linked” to an order of removal are  
16 prohibited under Section 1252(a)(5). Martinez, 704 F.3d at 623. The distinction  
17 between an independent claim and an indirect challenge turns on “the  
18 substance of the relief that a plaintiff is seeking.” Id. at 622 (citation omitted).

19        Here, it appears the Court lacks jurisdiction over the claims raised in the  
20 Petition. Petitioner seeks to relitigate the final order of removal, challenging  
21 the procedure and substance of the removal proceedings, arguing, among other  
22 things, that it was improper to issue the Notice of Intent and final order of  
23 removal on the same day, he is a “citizen or national of the U.S.,” he is being  
24 confused with someone else, and his criminal case is still pending on an  
25 “actual innocence motion.” Pet. at 3-4. He claims he is entitled to immediate  
26 release based on DHS’s erroneous finding that he is deportable as an alien  
27 convicted of an aggravated felony. Id. at 4. As such, Petitioner appears to be  
28 seeking an order rescinding the final order of removal, which is precisely the

1 type of relief that is outside the subject matter jurisdiction of this courts. See  
2 Iasu v. Chertoff, 426 F. Supp. 2d 1124, 1128 (S.D. Cal. 2006) (explaining that  
3 the district court must dismiss, rather than transfer, a habeas petition filed after  
4 May 11, 2005), affirmed by Iasu v. Smith, 511 F.3d 881, 891-93 (9th Cir. 2007)  
5 (agreeing with Eleventh Circuit that even if habeas corpus relief is precluded by  
6 the REAL ID Act, a deportable alien can still seek review of constitutional and  
7 legal claims by moving the immigration judge or Board of Immigration  
8 Appeals to reopen or reconsider its previous ruling, and if unsuccessful, by  
9 filing a petition for review in the appropriate court of appeals).


10 **IV.**

11 **ORDER**

12 For the foregoing reasons, the Petition is subject to dismissal. Petitioner  
13 is therefore ORDERED TO SHOW CAUSE, in writing, **by no later than**  
14 **twenty-one (21) days from the date of this Order** why this action should not  
15 be dismissed under Habeas Rule 4 for lack of jurisdiction. If, after review of  
16 this Order, Petitioner decides not to further pursue this action at this time,  
17 Petitioner may voluntarily dismiss the action by filing a Notice of Dismissal in  
18 accordance with Federal Rule of Civil Procedure 41(a)(1). The Clerk is  
19 directed to send Petitioner a Central District Request for Dismissal form.

20 Petitioner is cautioned that a failure to respond timely in compliance  
21 with this Order could result in the dismissal of this action for the foregoing  
22 reasons, for failure to prosecute, and/or failure to comply with a Court order.  
23 See Fed. R. Civ. P. 41(b).

24  
25 Dated: January 03, 2024

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27   
28 JOHN D. EARLY  
United States Magistrate Judge